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David Earl Honig, Executive Director
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January 12, 2000

Hon. William Kennard
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Kennard:

RE: Broadcast and Cable EEO Rules,
MM Docket No. 98-204 (ex parte) 1/

The debate over new recruitment rules should end where it began, with the realization that most recruitment is done through the old-boy network. Advertisers, other broadcasters, friends of the station's staff, and some managers' golfing buddies learn right away when a vacancy arises. The modest gains in minority and female employment until 1998 happened only because broadcasters were expected to reach beyond this close-knit group, giving a wider pool of qualified people notice and an opportunity to present their qualifications.

It's essential that the Commission act, with as much resolve as it can muster, to produce rules that are efficient, effective and capable of evaluation. Specifically:

1. The most important step the Commission can take is to adopt a zero tolerance policy on discrimination. The Commission should take strong enforcement action, including designating for hearing, when anyone is denied consideration for employment because of her race or gender, or when most recruitment is done by word of mouth from a homogeneous workforce.
2. Even if the Commission does not adopt a targeted recruitment plan, it should reaffirm the NPRM's tentative view that targeted recruitment would not trigger strict scrutiny as long as hiring is race- and gender-neutral.

1/ In this proceeding, MMTC represents thirty parties, including most of the nation's national civil rights organizations. The views expressed in this letter are MMTC's views and those of its clients, and do not necessarily reflect the individual views of each of MMTC's officers, directors or members.

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3. Recognizing that race- and gender-neutral rules have never been sufficient to overcome the effects of generations of discrimination and privilege, the Commission should carefully study which additional steps are necessary. At the outset, it should keep the docket open for the submission of anecdotal information regarding discrimination and its present effects, and for recommendations on how to conduct empirical research on diversity in the broadcast labor market. We will gladly help collect and present the overwhelming evidence that discriminatory barriers to employment have not yet been overcome.
4. Recruitment should be undertaken for each vacancy. Notwithstanding the contrived hypotheticals offered by EEO opponents, it is rarely impossible, and never inappropriate or burdensome, to take a few seconds to e-mail a job posting to recruitment sources.
5. The Commission should ensure that applicant and interview tracking data is always available, so that it can determine whether discrimination has occurred. 2/ As Boeing Co. CEO Phil Condit recently said, "[t]here is an old adage in business: what gets measured - gets done." Fair Employment Report, January 27, 1999, p. 9.
6. Stations should always use a variety of sources likely to reach a diverse cross-section of qualified applicants. Even when the former rules were in effect, broadcasters often ignored obvious sources of minority and female applicants. See MMTC Comments, p. 226 (reporting that most of Washington, D.C.'s broadcasters seldom sent job announcements to Bowie State University, the University of the District of Columbia and the African American Media Incubator.) It's not burdensome for broadcasters to e-mail job postings to a variety of logical sources.
7. Heavy reliance on the Internet would be a serious mistake. Most minorities lack access to the Internet in school, at work or at home. Many libraries lack Internet access, or do not have sufficient computer staff, evening hours, or geographic accessibility to the entire population. See F. McKissack, "Cyberghetto: Blacks are Falling Through the Net", The Progressive, June, 1998, pp. 20-22 (reporting that in households with annual incomes below \$40,000 which had access to a telephone, Whites were six times more likely than Blacks to have used the World Wide Web, and that low-income White households were twice as likely to have a home computer as low-income Black homes.) Until the digital divide is bridged, no EEO enforcement initiative should substitute Internet use for other inexpensive forms of recruitment.
8. Reliance on on-air job announcements would also be a serious mistake. A job's unique specifications seldom are explainable in a medium whose information is impermanent. That is why few employers pay broadcasters to advertise jobs over the air, and why broadcasters typically use "competing" print media to advertise openings.
9. Providing fair employment must remain the responsibility of each broadcaster -- an earmark of his citizenship in the community he serves. Broadcasters cannot delegate the task of developing trusting, credible relationships with community groups and minority media. Trade organizations are often useful in sponsoring job fairs, as does MMTC. But private and sometimes anti-civil rights organizations should never be deputized by the government to offer "Certificates of Compliance" with federal EEO rules or policies.
10. A broadcast license is a valuable privilege. The least the FCC can expect in return is that today's broadcasters help grow the next generation of broadcasters by providing training, internships, and a fair and nurturing working environment free from discrimination.

2/ Data on interviewees is especially critical. An interview is the oral component of the application process. To prevent the Commission from inadvertently motivating broadcasters to use race or gender in hiring decisions, a regulatory firewall should be erected at the point where the interviewees leave the room and the selection process begins.

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These steps would help protect against discrimination, remedy past discrimination and achieve diversity throughout the industry,

Sincerely,

A handwritten signature in black ink, appearing to read 'David Honig', with a large, stylized flourish extending to the right.

David Honig
Executive Director

cc: Hon. Harold Furchtgott-Roth
Hon. Susan Ness
Hon. Michael Powell
Hon. Gloria Tristani
Edward Fritts
Richard Zaragoza, Esq.

/dh